principal against an agent who holds the proceeds of an executed unlawful enterprise. See *Baldwin* v. *Potter*, 46 Vt. 402; *Yale Jewelry Co.* v. *Joyner*, 159 N. C. 644, 75 S. E. 993. Where the contract is actually fraudulent, these cases are open to question. See 3 WILLISTON, CONTRACTS, § 1786. At any rate, the principle has never been extended to partnerships. *McMullen* v. *Hoffman*, 174 U. S. 639; *Hunter* v. *Pfeiffer*, 108 Ind. 197, 9 N. E. 124. Moreover, the public policy invalidating the contract would lose all force as a deterrent unless it also prevented a recovery of profits, since from the nature of the agreement that is the only way in which either party would ever want it enforced.

JUDGMENTS — EQUITABLE RELIEF — PERJURY A GROUND FOR INJUNCTION. — The defendant obtained a judgment in a state court by testifying falsely and by feigning paralysis alleged to have resulted from injuries. The plaintiff, discovering the fraud and perjury, requested the state courts to vacate the judgment, but they declined on procedural grounds. The plaintiff now petitions the federal court to enjoin the enforcement of the judgment. *Held*, that an injunction will be granted. *Chicago, R. I. & P. Ry. Co.* v. *Callicotte*, 267 Fed. 799.

Federal and state courts of equity will enjoin the enforcement of a domestic or foreign judgment obtained by fraud, in a matter not before the court. For example, such a situation arises when a defendant has failed to assert his defense because of the assurance of the plaintiff that the latter would not prosecute the suit until he notified the defendant. *Pearce* v. *Olney*, 20 Conn. 544; see HIGH, INJUNCTIONS, 4 ed., § 191. The defendant has not had his day in court. But courts generally deny injunctive relief when the fraud of the plaintiff either consists in perjured testimony at the trial or relates to issues fully argued on their merits. *Steen* v. *March*, 132 Cal. 616, 64 Pac. 994; *Maryland Steel Co.* v. *Marney*, 91 Md. 360, 46 Atl. 1077. In support of their position these courts urge that a re-examination of these issues would result in endless litigation. Furthermore, the defendant has had a day in court. These are valid reasons why equity should proceed with greater hesitation and deliberation. But once the fraud or perjury is clearly established, injunctive relief should follow no less than in the other cases of misrepresentation by the plaintiff. Of course, the defendant must show that he exercised diligence and that he has a sufficient defense on the merits. *Spokane Co-operative Mining Co.* v. *Pearson*, 28 Wash. 118, 68 Pac. 165; *Village of Celina* v. *Eastport Savings Bank*, 68 Fed. 401; *Ableman* v. *Roth*, 12 Wis. 81; *Davis* v. *Overseer*, 40 N. J. Eq. 156. The principal case represents the minority but sound view.

MINES AND MINERALS — EASEMENTS — RIGHT OF PURCHASER OF COAL TO USE UNDERGROUND HAULWAYS FOR REMOVING COAL FROM OTHER LAND. — The defendant purchased all the coal under plaintiff's land, with the right to mine and remove the same. After removing part of this coal, he used the underground haulways under plaintiff's land to haul out coal from other land. The plaintiff seeks to have this practice enjoined. *Held*, that the injunction be granted. *Clayborn* v. *Camilla Red Ash Coal Co.*, 105 S. E. 117 (Va.).

A grant of minerals gives to the grantee an easement in the grantor's land for all purposes reasonably incident to their removal. *Marvin* v. *Brewster Iron Mining Co.*, 55 N. Y. 538; *Northcut* v. *Church*, 135 Tenn. 541, 188 S. W. 220. An easement must be restricted to the use for which it is granted. *Valley Falls Co.* v. *Dolan*, 9 R. I. 489; *Crabtree Coal Min. Co.* v. *Hamby's Adm'r.*, 28 Ky. L. 687, 90 S. W. 226. See 2 WASHBURN, REAL PROP., 6 ed., § 1268. Consequently if the grantee gets nothing more than such an easement he can be restrained from using the underground passages for the removal of other coal. But according to many decisions the purchaser of coal acquires not only an ease-

ment in the grantor's land, but a corporeal estate in the walls containing the coal and the space occupied by it after its removal, which he can use for any purpose. *Lillibridge* v. *Lackawanna Coal Co.*, 143 Pa. St. 293, 22 Atl. 1035; *Schobert* v. *Pittsburg Coal Min. Co.*, 254 Ill. 474, 98 N. E. 945. *Proud* v. *Bates*, 34 L. J. (Ch.) 406. See 3 LINDLEY, MINES, 3 ed., § 813a. But see *Ramsay* v. *Blair*, 1 A. C. 701. Obviously this property in the walls and space does not continue forever. See *Webber* v. *Vogel*, 189 Pa. St. 156, 42 Atl. 4. Ordinarily a purchaser of realty to be severed from the soil is not considered as owner of the space occupied by that realty after its removal. Nor does a corporeal estate in the containing walls seem either a necessary or a reasonable incident to the purchase of coal. It seems, therefore, that the court in the present case rightly repudiated the doctrine of these cases, and adopted a rule more in conformity with legal principles.

NEW TRIAL — SUCCESSIVE VERDICTS — SETTING ASIDE SECOND VERDICT FOR THE SAME PARTY AS AGAINST THE WEIGHT OF EVIDENCE. — A verdict for the plaintiff was set aside as against the weight of evidence and a new trial granted. At the second trial a verdict was again rendered for the plaintiff and the defendant again moved for a new trial on the same ground. *Held*, that the motion be denied. *Gutman* v. *Weisbarth*, 185 N. Y. Supp. 261.

It is well settled that when a verdict is manifestly against the weight of evidence, it will be set aside and a new trial granted. *Wood* v. *Gunston*, Style, 466; *Jones* v. *Spencer*, 77 L. T. R. 536; *Carney* v. *Stringfellow*, 73 Fla. 700, 74 So. 866. See THAYER, PRELIM. TREAT. 208. To justify a new trial it is not sufficient that the court merely disagree with the verdict, it being necessary for the verdict to be so much against the weight of evidence as to be unreasonable. *Klock Produce Co.* v. *Diamond Ice & Storage Co.*, 98 Wash. 676, 168 Pac. 476. In the absence of statute there is apparently no limit to the number of times successive verdicts may be set aside as being against the weight of evidence. *Gnecco* v. *Pedersen*, 151 N. Y. Supp. 105; *Barrett* v. *Lewiston, etc. R. R.*, 113 Me. 562, 92 Atl. 934; *Gross Coal Co.* v. *Milwaukee*, 170 Wis. 467, 175 N. W. 793. But the fact that two or more juries agree on a verdict is naturally strong evidence that the verdict is reasonable. For this reason, and in order to prevent litigation from being unduly prolonged, courts are reluctant to consider a second verdict for the same party as sufficiently against the weight of evidence to justify another submission to a jury. See *Miller* v. *Central of Ga. R. R.*, 16 Ga. App. 855, 87 S. E. 303; *Ilsley* v. *Kelley*, 117 Me. 572, 104 Atl. 631. And many states have provided by statute that a party can have but one new trial on the ground that the verdict is against the weight of evidence. See *Van Loon* v. *St. Joseph R. R. & Power Co.* 271 Mo. 209, 195 S. W. 737.

PARDON — NECESSITY OF DELIVERY — EFFECT OF HONEST MISREPRESENTATION. — The warden of the prison in which the petitioner was confined notified the governor through mistake that the petitioner's term would expire on November 25, 1920. In fact the term expires in April, 1921. According to his custom of pardoning worthy convicts a month before the expiration of their sentences, the governor in September, 1920, mailed to the warden a pardon for the petitioner, "to take effect on the 25th day of October, 1920." The governor, hearing of his mistake, revoked the pardon before October 25. The petitioner applies for a writ of *habeas corpus*. *Held*, that the writ be denied. *Ex parte Ray*, 193 Pac. 635 (Okla.).

A pardon is a deed, and delivery is requisite to its operation. See *United States* v. *Wilson*, 7 Pet. (U. S.) 150, 160. When possession is relinquished, whether or not there is a delivery depends on the grantor's intent. So in the principal case there may have been a present constructive delivery to the